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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Application of MCI WorldCom Inc.)
and Sprint Corporation for Consent to)
the Transfer of Control of Licenses)
Sprint Corporation to)
MCI WorldCom Inc.)
_____)

CC Docket No. 99-333

To: The Commission

THE PETITION TO DENY OF
THE RAINBOW/PUSH COALITION
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS
THE GREENLINING INSTITUTE
AND
THE LATINO ISSUES FORUM

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SUMMARY

The Rainbow/PUSH Coalition, the League of United Latin American Citizens, The Greenlining Institute and the Latino Issues Forum believe that the proposed merger of MCI WorldCom and Sprint raises serious questions regarding the Applicants' commitment to providing equal access to telecommunications infrastructure and services to all consumers, regardless of ethnic origin or economic standing. Of further concern are the clearly anticompetitive consequences for the long distance market and the Internet backbone market, and the potential degradation of local service in Sprint local exchanges nationwide. Therefore, Rainbow/PUSH, LULAC, Greenlining and the Latino Issues Forum respectfully request that the Commission deny the Application for Transfer of Control or, in the alternative, seek voluntary conditions from MCI WorldCom and Sprint to remedy the concerns listed below.

Redlining Commitments Made During The MCI WorldCom Merger. As an initial matter, this merger offers the Commission the opportunity to revisit and examine the sincerity of the implicit commitments made by one of the Applicants – MCI WorldCom – regarding infrastructure build-out to low-income and minority areas in cities across the country. Thus far, the information provided by the Applicants makes it all but impossible to determine whether MCI WorldCom has followed through on promises it made during similar merger proceedings two years ago. Rainbow/PUSH, LULAC, Greenlining and the Latino Issues Forum believe that the Commission should require the production of sufficient information to determine if MCI WorldCom's

advanced fiber facilities and related services have been expanded in the manner suggested by these companies' statements during their merger. If they have not, and cream-skimming and redlining have continued, the Commission should either deny this application or seek voluntary conditions from the Applicants sufficient to ensure that their networks and services are accessible to those most affected by the growing "digital divide."

Domestic Long Distance. Similarly, the merger will increase the level of concentration in the long distance market, with the ultimate effect of harming low-volume users – primarily low-income consumers. The elimination of Sprint as a competitor increases the likelihood that the merged entity will engage in tacit collusion to maintain a duopoly. Such tacit collusion will severely disadvantage competitors that do not have the brand recognition to compete effectively on the massive scale of the Applicants. As a result, the post-merger company will be one of two companies that will essentially control the long distance market. Increased concentration will thus place additional burdens on low-volume users, many of whom are economically disadvantaged, who will likely face increased monthly fees for long distance service.

International Long Distance. Also of concern is the market power that the combined company will exert over a variety of international routes from the United States to Mexico, Latin America, Africa, the Caribbean and elsewhere, which may lead to increased rates for immigrants and minority consumers. MCI WorldCom and Sprint are currently major competitors on many international long distance routes. The elimination of a competitor for these markets will

result in such a concentration of power that price increases will undoubtedly result. The price increases will place a disproportionate burden on this nation's large minority and immigrant communities, which depend on these international routes to maintain familial and business relationships.

Control of the Internet Backbone. The merger will result in undue concentration in the Internet backbone market that should be prevented – either by denial of the Application, or through divestiture of MCI WorldCom's UUNET business. MCI WorldCom and Sprint exercise significant power over the Internet backbone, the core infrastructure of the Internet, controlling at least 50 percent of the market. The merger will concentrate this market power in a single entity, providing the Applicants with both the motivation and the means to stifle burgeoning competition. In order to protect the uniquely competitive, yet cooperative, nature of the Internet backbone, the Commission should either deny the Application or require the Applicants to shed UUNET, as its divestiture is most likely to ensure a reduction in the merged company's potential to control Internet traffic.

Sprint's Local Exchanges. Additional concerns exist regarding the future of Sprint's local exchanges after they are acquired by MCI WorldCom, a company that has demonstrated little commitment to local exchange customers. It is doubtful whether the post-merger company will maintain or upgrade these exchanges as it seeks to maximize merger efficiencies and lower overhead costs.

The Commission Should Reject the Merger. The ultimate conclusion is inescapable – the damage that this merger will cause to consumers of

Internet, long distance and local service is simply too great to be countenanced. When compounded by the Applicant's silence regarding the implicit commitments made by MCI WorldCom two years ago, there is little to support their proposed merger. Rainbow/PUSH, LULAC, Greenlining and the Latino Issues Forum urge the Commission to deny the joint petition of MCI WorldCom and Sprint or, in the alternative, seek enforceable, voluntary conditions to remedy the concerns stated herein.

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PETITION TO DENY OF
THE RAINBOW/PUSH COALITION
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS
THE GREENLINING INSTITUTE
AND
THE LATINO ISSUES FORUM

Pursuant to 309(d)(1) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the Rainbow/PUSH Coalition, the League of United Latin American Citizens, The Greenlining Institute and the Latino Issues Forum¹ respectfully submit their Petition to Deny the Application of MCI

¹ Hereinafter, "Rainbow/PUSH," "LULAC," "Greenlining," and "LIF," or, collectively, the "Petitioners."

WorldCom Inc. and Sprint Corporation for Consent to the Transfer of Control of Licenses from Sprint Corporation to MCI WorldCom Inc.²

I. INTRODUCTION

“[T]he public interest demands constraints on the ability of a handful of large communications [companies] to consolidate communications assets that [are] vital to our nation’s economy. Discussion of ‘the public interest’ in merger cases too often focuses on the ‘interest’ side of the equation – industry interests, shareholder interests and economic interests. The FCC, on the other hand, has a unique statutory responsibility to keep the ‘public’ side of the equation – consumers – in sharp focus. The FCC is in many ways the last defense for consumers, and we have a statutory obligation to ensure that mergers will result in tangible benefits for American consumers, namely, more choices, lower prices, and new and better services.”³

The burden has been placed on MCI WorldCom Inc. and the Sprint Corporation,⁴ by law and mandate of the Federal Communications Commission, to demonstrate that their merger serves the “public interest.” That is, they must show that tangible benefits – more choices, lower prices, new and better services

² *Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee for Consent to Transfer Control*, CC Docket No. 99-333 (filed Nov. 17, 1999) (Application).

³ *Statement of William E. Kennard, Chairman, Federal Communications Commission Before the U.S. Senate Committee on Commerce, Science, and Transportation On Mergers in the Telecommunication Industry* (visited Feb. 11, 2000) <<http://www.fcc.gov/Speeches/Kennard/spwek938.html>>.

⁴ Hereinafter, “MCI WorldCom,” “Sprint,” or, collectively, the “Applicants.”

– will not only be made available to consumers, but will be provided to all on an equal basis, regardless of ethnic background or economic circumstance.

Yet a review of the *Application* in this proceeding, and an evaluation of the potential consequences for consumers if this merger is permitted to proceed unconditionally, reveals that the only interests that will be served are, indeed, the “industry,” “shareholder” and “economic” interests of the Applicants themselves. Therefore, the Petitioners respectfully request that the Commission deny the *Application*. In the alternative, the Petitioners urge the Commission to make its approval conditional upon the Applicants’ agreement to enforceable provisions that resolve the issues of equal access and marketplace competition that are raised below.

The proposed merger of MCI WorldCom and Sprint is harmful to American telecommunication consumers for a number of reasons: (1) The Applicants have failed to demonstrate that they have fulfilled their earlier commitments to build-out MCI WorldCom’s advanced telecommunications network to serve urban low-income and minority communities, thus raising the prospect of redlining by the post-merger company; (2) The merger is likely to lead to increased long distance rates by creating a duopoly, in which only two companies will be in a position to compete for consumers nationwide; (3) It will concentrate control over international calling routes, routes relied upon by a disproportionate number of minority and low-income consumers, with the likely consequence that rates will increase; (4) The merger will effectively consolidate control of the Internet backbone within a single company, with potentially

catastrophic consequences for Internet competition; (5) It will exacerbate the “digital divide,” widening the gulf between the technological “haves” and “have nots.”

II. MCI WORLDCOM HAS FAILED TO DEMONSTRATE THAT IT HAS FULFILLED EARLIER COMMITMENTS TO EXPAND ITS FACILITIES AND SERVICES TO SERVE URBAN, LOW-INCOME AND MINORITY CONSUMERS

The availability of advanced telecommunications services has long been established as vital to the interests of consumers. The benefits that flow from the deployment of advanced infrastructure (*e.g.*, competitive access to information, electronic commerce, and enhanced educational services) are essential to the economic and educational development of communities.⁵ Thus, the Commission has accepted as fundamental its role to ensure that access to advanced telecommunications services is provided in a non-discriminatory manner to all consumers, and has determined that the provision of non-discriminatory access to such services should be an element of the public interest review to which mergers of telecommunications companies are subject.

During merger proceedings two years ago, the Commission was presented with evidence that MCI and WorldCom’s advanced fiber-optic networks were constructed in a manner that the Petitioners and others believe indicated a

⁵ See National Telecommunications and Information Administration (1999), *Falling Through the Net; Defining the Digital Divide* (visited Feb. 11, 2000) <<http://www.ntia.doc.gov/ntiahome/fttn99/part1.html>> (*Falling Through the Net*).

pattern of redlining and cream-skimming by the companies.⁶ This evidence, in the form of maps, illustrated that facilities were constructed in and around city centers in an apparently gerrymandered fashion. This evidence was met with assurances from MCI and WorldCom that any perceived inequalities in their network build-out were the inevitable consequence of economic concerns not discrimination. Nevertheless, the companies told the Commission that those urban, low-income and minority neighborhoods that had been bypassed during initial construction were “well positioned to receive the benefits of local competition from MCI WorldCom.”⁷ The Commission accepted this implicit promise to serve these consumers,⁸ and the merger of MCI and WorldCom was approved.

Now, as these companies request, yet again, Commission approval for another mega-merger, MCI WorldCom’s past commitments should be tested in the crucible of public scrutiny.

⁶ See, e.g. *Further Comments of Rainbow/PUSH Coalition on WorldCom/MCI’s Joint Reply To Petitions To Deny And Comments*, CC Docket 97-211 (filed Mar. 13, 1998), *Ex Parte Presentation on Redlining, Rainbow/PUSH Coalition and the Greenlining Institute, et al.*, CC Docket 97-211 (filed June 3, 1998).

⁷ *Second Joint Reply of WorldCom, Inc. and MCI Communications Corporation*, CC Docket No. 97-211, at 93 (filed March 20, 1998) (*Second Joint Reply*).

⁸ See *WorldCom, Inc. and MCI Communications Corporation, Application for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, 18143-44 (1998) (Memorandum Opinion and Order) (*MCI/WorldCom Order*).

A. MCI WorldCom and Sprint Must Demonstrate As Part Of Their Public Interest Showing That They Have Deployed Their Telecommunications Services and Facilities in a Non-Discriminatory Manner

The Communications Act provides that the Commission may grant a transfer of control application only after determining that the transfer will serve the “public interest, convenience, and necessity.”⁹ To that end, the Commission has determined that, aside from its review of the citizenship, character, and financial and technical qualifications of a transferee, it will also consider the effect of a transfer on competition¹⁰ and other issues implicated by a transaction.¹¹

In its review of the merger of MCI and WorldCom, the Commission specifically determined that as a component of its public interest review it will “consider . . . whether the proposed merger would aggravate a situation where either of the merging parties deployed telecommunications facilities in a

⁹ See 47 U.S.C. §§ 214(a), 309(a), 310(d) (1999).

¹⁰ See *NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, 19992 (1997) (Memorandum Opinion and Order) (*Bell Atlantic/NYNEX Order*); See also *MCI/WorldCom Order*, at 18030-31.

¹¹ See, e.g., *Pittencreiff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencreiff Communications, Inc. and its Subsidiaries*, 13 FCC Rcd 8935 (1997) (Commission reviewed potential violations of its rules regarding spectrum ownership); *GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent of Transfer of Control*, CC Docket No. 98-184 (Commission currently reviewing potential Section 271 issues raised by the merger).

discriminatory manner.”¹² The Commission justified including this element in its public interest review of the MCI WorldCom merger because it believed that discrimination in deployment of infrastructure and services “would be contrary to the purpose of the Communications Act, the obligations imposed on common carriers in the Communications Act, and the fundamental goal of the 1996 Act to bring communications services ‘to all Americans.’”¹³ Thus, it has been conclusively established that the Commission will consider in its review of transfer applications the manner in which merger applicants have deployed telecommunications infrastructure, provided access to those facilities and delivered services.

¹² See *MCI/WorldCom Order*, at 18143-44.

¹³ *Id.* (citing 47 U.S.C. § 151 [Section 151 of the Communications Act charges the Commission to ensure that telecommunication services are provided “to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex . . .”]; 47 U.S.C. § 202 [“It shall be unlawful for any common carrier to make unjust or unreasonable discrimination in charges, practices, classification, regulations, facilities, or services . . . , or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”]; Joint Managers’ Statement, S. Conf. Rep. No. 104-230 at 113; 47 U.S.C. § 254(b)(3) [“Consumers in all regions of the nation, including low income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . .”]).

B. MCI WorldCom Has Not Demonstrated That It Has Followed Through on Its Commitment to Serve Low-Income and Minority Residents in Urban Areas

1. MCI and WorldCom made commitments to service low-income and minority communities during their merger proceeding

During the yearlong FCC review of the MCI WorldCom merger that began in 1997, various organizations, including Rainbow/PUSH and Greenlining, examined the manner in which MCI and WorldCom constructed their fiber optic networks in urban areas across the country. The analysis revealed in cities such as New York, Atlanta, Miami, Chicago, Los Angeles and San Francisco/Oakland, that fiber optic networks appeared to have been deployed in a manner that exclusively catered to areas in which the largest businesses and wealthiest residents were located. Regions populated by low-income residents, minority residents and minority-owned businesses appeared to have been substantially excluded from the network build-out.

In response, MCI and WorldCom stated that, at the time it was being deployed, fiber was not considered a viable means for mass market telephone services.¹⁴ The companies claimed that economic efficiencies and their desire to earn a faster return on their investments warranted the initial servicing of larger business customers in these highly populated areas.¹⁵ In regard to concerns about possible discrimination, MCI and WorldCom insisted that “low-

¹⁴ *Second Joint Reply* at 93-94.

¹⁵ *Id.*

income and minority communities located in and around these city centers are well positioned to receive the benefits of local competition from MCI WorldCom. MCI and WorldCom are eager to expand their combined networks and provide service to residences and businesses of all socioeconomic levels.”¹⁶

These statements implied that the low-income and minority communities located in and around city centers where MCI WorldCom had placed their facilities would be the beneficiaries of a network expansion and the provision of competitive advanced services in the not-too-distant future. The Commission accepted MCI and WorldCom at their word, concluding in its Order approving the merger that “the current placement of fiber networks in and around city centers means that, as the combined entity builds out its local networks, low-income and minority communities located in and around these city centers are well-positioned to receive the benefits of local competition.”¹⁷ The Commission approved the merger based in part on a presumption that the merged entity’s ability to provide service “[would] not only be advantageous for residential customers in urban areas and large cities, but [would] enable Applicants to serve consumers of all socio-economic levels.”¹⁸

¹⁶ *Id.*

¹⁷ *See MCI/WorldCom Order*, at 18145.

¹⁸ *Id.* at 18146.

2. The Applicants have provided no information to substantiate that they have followed through on their commitments to urban, low-income and minority consumers

Two years ago, WorldCom and MCI claimed that the fiber build-out analysis provided by Rainbow/PUSH and Greenlining only reflected its networks as originally deployed. MCI and WorldCom insisted that, even then, their networks had been expanded considerably from the representations that had been submitted.¹⁹ However, the companies did not provide any information to substantiate their claims and the precise details of their network geography remained a mystery.

With their merger approved, MCI WorldCom has continued with the build-out of its 45,000 mile national fiber network and, by its own account, the ranks of its customer base have flourished, and its revenues have soared.²⁰ The Petitioners do not take issue with these successes, but do question at what price they may have been achieved. Because there is no publicly available information regarding the current geographic reach of MCI WorldCom's fiber network, the Petitioners question whether MCI WorldCom has continued to focus on cream-skimming Fortune 500 companies and other big business customers while limiting access to these facilities and services by low-income

¹⁹ *Joint Reply of WorldCom, Inc. and MCI Communications Corporation to Petitions To Deny and Comments*, CC Docket 97-211, 92 (filed Jan. 26, 1998) (*Joint Reply*); *Second Joint Reply* at 93-94.

²⁰ *See MCI WorldCom Reports Fourth Quarter 1999 Results* (Feb. 10, 2000) <http://www.wcom.com/about_the_company/press_releases/display.phtml?cr/20000210>.

and minority residents and small businesses. MCI WorldCom has provided no answers. The *Application* is void of any reference to this issue, let alone data confirming that Applicants have delivered on the promises made during the MCI WorldCom merger proceeding.

Attempts by the Petitioners to obtain this information have been futile, as the companies have published little new or detailed data on the placement of their network infrastructure in urban settings.²¹ While it may be possible to compile this information by engaging in a block-by-block review of rights-of-way maps in city engineers' offices nationwide, such a monumental and costly effort is beyond the means of the Petitioners. Nor would it provide the insight into MCI WorldCom's customer base that is required for an assessment of their marketing practices.

Because the need to ensure fair and equitable provision of service to all of the nation's telecommunications consumers outweighs any potential inconvenience to the Applicants, the Petitioners believe that requiring a supplemental filing is the most appropriate manner in which to proceed. These maps and other resources are possessed by the Applicants, can be produced with little inconvenience and, in any event, should have been included with their *Application*. Therefore, in order to verify whether MCI and WorldCom provide advanced infrastructure and services to the urban, low-income and minority residents who were bypassed during the first stages of their network build-out,

²¹ Indeed, the maps provided by Rainbow/PUSH during the MCI WorldCom merger proceeding appear to be the most recent reliable information that is

the Petitioners respectfully request that the Commission require the Applicants to provide a supplemental filing on these issues.²²

C. If MCI WorldCom Has Failed to Follow Through on Its Commitments, Then Conditions Related to the Build-Out of Urban Telecommunications Facilities and Service Provision Are An Appropriate Remedy

Two years ago, the FCC relied upon the implied assurances of MCI WorldCom that it would soon take its advanced fiber-optic network and services to low-income, urban residential and minority neighborhoods.²³ If the Applicants cannot demonstrate that the Commission's faith was justified, it is incumbent upon the Commission to seek enforceable, voluntary conditions to ensure non-discriminatory access to these essential competitive services and facilities in the future.

publicly available.

²² The Petitioners understand that these matters may involve materials that contain sensitive and proprietary information. Therefore, if necessary, they may be made available subject to confidentiality provisions that have become customary during merger review proceedings.

However, Petitioners note that large media and telecommunications companies have often taken the position (vis a vis state and local regulatory bodies) that the precise nature of their installed facilities is a "trade secret," and thus they are under no obligation to reveal to public authorities what exactly has been installed into public streets and rights of way. The Petitioners categorically reject this point of view. The public has a right to know what is in public streets and rights of way, although some of the technical details of the equipment's operation may properly be subject to an appropriate protective order.

²³ *Second Joint Reply*, at 93-94.

During their merger proceeding, MCI and WorldCom explained away their failure to bring infrastructure and services directly to low-income and minority communities by pointing to the nascency of their network facilities, and business decisions designed to generate immediate returns. Nevertheless, the companies did make representations regarding the future reach of their network, and must not be permitted to forestall the prompt delivery of infrastructure and services to low-income and minority residents.

In the past, when the Commission has sought to ensure that commitments made by merger applicants will be enforceable, it has generally relied upon voluntary “conditions” to which applicants have agreed prior to the approval of their transaction.²⁴ In other recent mergers, the Commission has specifically addressed the build-out of urban telecommunications infrastructure and provision of services to underserved urban areas through these types of arrangements.²⁵

²⁴ See *Bell Atlantic/NYNEX Order*, at 20069-70; *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, FCC 99-279, Lexis 5069, ¶¶ 143-198 (Oct. 8, 1999) (*SBC/Ameritech Order*).

²⁵ In the SBC/Ameritech merger, the parties agreed to conditions which required the identification of the ten (10) percent of urban and rural wire centers within each SBC/Ameritech Service Area in each SBC/Ameritech state that had the greatest number of low-income households, as estimated by the latest available census data (“Low Income Pool”). By the time the parties deployed xDSL in at least 20 urban and 20 rural wire centers in a particular state, at least ten (10) percent of those wire centers must have been comprised of centers from the Low Income Pool. *SBC/Ameritech Order*, Appendix C, at 32. Additionally, SBC/Ameritech was required to file a quarterly report with the Commission describing the status of its xDSL roll-out, including the number and name/location of the wire centers where the xDSL was deployed. *Id.*, at 32. In the pending Bell Atlantic/GTE merger, the parties have proposed similar conditions, except that ten (10) percent must come from the Low Income Pool.

If MCI WorldCom has failed to meet its earlier commitments to underserved communities, and the Commission nevertheless approves their merger with Sprint, there must be a mechanism imposed to ensure that low-income and minority urban residents receive the benefits of access to new, advanced infrastructure and services. Petitioners recommend that the Commission seek an enforceable agreement similar to those regarding the deployment of advanced services to low-income areas in the *SBC/Ameritech Order* and which have been proposed in the pending Bell Atlantic/GTE merger.

III. THE PROPOSED MERGER WILL INCREASE DOMESTIC LONG DISTANCE PRICES AND PLACE A DISPROPORTIONATE BURDEN ON LOW-INCOME, LOW-VOLUME CONSUMERS

A. The Proposed Merger Will Undermine Competition In The Domestic Long Distance Market

Three facilities-based carriers, AT&T, MCI WorldCom and Sprint, account for more than 75 percent of all domestic long distance revenues. In fact, the combined shares of other facilities-based carriers providing long distance service to residential and small business consumers amount to less than the share of Sprint, the smallest of the Big Three carriers. By eliminating one of the Big Three, the proposed merger will increase market concentration in the domestic long distance market and facilitate the tacitly cooperative process now in place for increasing prices.

See Proposed Conditions For Bell Atlantic/GTE Merger, CC Docket 98-184, at 25 (filed Jan. 27, 2000).

Application of the Herfindahl-Hirschman Index (“HHI”), the tool used by the Department of Justice to analyze market concentration,²⁶ demonstrates that the proposed merger will result in an unacceptable increase in concentration in the domestic long distance market. More specifically, the proposed merger would increase the HHI in this market from 3,945 to 4,164. Because the proposed merger will occur in a highly concentrated market (the domestic long distance market presently has an HHI well above 1800), and will result in an HHI increase of more than 100 points, the presumption arises that the merger is “likely to create or enhance market power or facilitate its exercise.”²⁷

B. The Increased Concentration Will Lead to Increased Monthly Fees For Domestic Long Distance Service

The price competition that currently exists in the long distance market stems directly from competition between Sprint and MCI. For example, Sprint helped begin the current wave of new long distance pricing plans with the introduction of flat rate pricing. MCI WorldCom and AT&T followed suit only when it became clear that such action was required for them to remain competitive. The proposed merger will eliminate Sprint, the carrier that has

²⁶ The HHI is calculated by summing the squares of the individual market shares of all market participants. *See 1992 Horizontal Merger Guidelines*, 57 Fed. Reg. 41552, 41558 (DOJ and FTC, Sept. 10, 1992). The FCC has determined that the HHI analysis is useful in examining whether increased market concentration resulting from a merger is consistent with the public interest under the Communications Act of 1934.

²⁷ *Id.*

historically driven competition, leaving consumers at the mercy of AT&T and the merged company.

MCI WorldCom and Sprint assert in their *Application* that the long distance market is robustly competitive and provide a list of competitors.²⁸ However, at the present time, there are no competitors capable of preventing, or even limiting, the dire effects of allowing the domestic long distance market to become more heavily concentrated. The second-tier, regionally-based long distance carriers listed as “competitors” by MCI WorldCom and Sprint lack these companies’ national brands. This lack of a national brand creates a strong barrier to entry into the domestic long distance market. Because residential and small business consumers choose long distance service on the basis of brand, and because building a nationally recognized brand takes years of effort, none of the second-tier, regionally based long distance carriers listed by the Applicants are likely to become viable alternatives to the Big Three at any time in the near future.

Moreover, most of these carriers intend to focus initially upon data services, and do not presently provide service to residential customers. Thus there is little chance they will challenge for customers in either the “bundled services” or residential markets. Indeed, of the eight second-tier carriers named in the Petition, four do not even offer long distance service to residential and small business consumers.

²⁸ *Application* at 41. The majority of competitors listed in the Application are second-tier regionally based long distance carriers. *Id.* n.53.

Ultimately consumers will be disadvantaged by the loss of Sprint as a competitor. Allowing MCI WorldCom to acquire Sprint will severely erode price competition in the long distance marketplace and lead to higher domestic long distance prices.

C. Higher Prices Will Have a Disproportionate Impact on Low-Income, Low-Volume Users

All long distance consumers will face increased monthly fees for domestic long distance in the wake of the proposed merger. However, low-volume consumers will feel the weight of these increased monthly fees more than other consumers because an increase in monthly fees will, in essence, substantially increase consumers' average per-minute-charge for long distance calls. Such increases will be more dramatic for low-volume consumers who make few or no long distance calls.²⁹

The increase in the average per-minute-charge for long distance calls will disproportionately affect minorities because a disproportionate number of low-income, low-volume consumers are members of minority groups. According to Census Bureau estimates, while Blacks and Latinos represented 23.3% of the

²⁹ Average per-minute-charge is computed by dividing the monthly fee for long distance by the number of long distance minutes used each month. Accordingly, an increase in monthly fees of \$5.00 impacts a low-volume consumer who makes just 5 minutes of long distance calls per month, who experiences an increase of \$1.00 per minute, more than it impacts another consumer who makes 500 minutes of long distance calls per month, who experiences an increase of \$0.01 per minute.

general population in 1998, at the same time, they represented 51.7% of persons living below the poverty level.³⁰

In addition, this merger will not only fail to serve the important goal of “bring[ing] to all Americans the benefits of a robust and competitive communications marketplace,”³¹ but actually may thwart it by forcing certain low-volume, low-income consumers to opt for the most expensive per-minute rate plans or discontinue their long distance service because they cannot afford the high monthly minimum fees. The proposed merger clearly will not serve the public’s interest in gaining access to affordable long distance rates or the widest selection of long distance providers.

IV. THE PROPOSED MERGER WILL HARM IMMIGRANT AND MINORITY CONSUMERS OF INTERNATIONAL LONG DISTANCE THROUGH INCREASED RATES

A. The Proposed Merger Will Result In Increased Concentration In The International Long Distance Market, Raising Rates for International Calls

MCI WorldCom and Sprint are currently major competitors in the international long distance market, which Applicants describe as “competitive.”³² However, Applicants fail to mention that AT&T, MCI WorldCom and Sprint account for more than 93% of the revenues in this

³⁰ See US Census Bureau, *Resident Population Estimates of the United States by Sex, Race, and Hispanic Origin; Poverty in the United States, Table A* (visited Feb. 15, 2000) <<http://www.census.gov:80/population/estimates/nation/infile3-1.txt>><<http://www.census.gov/hhes/www/poverty98.html>>.

³¹ *Low-Volume Long-Distance Users*, FCC 99-168 (July 20, 1999).

“competitive” market. The proposed merger of MCI WorldCom and Sprint would eliminate a major competitor in the international long distance market and put control of that market into the hands of a select few.

Consumers of international long distance service must presubscribe to the same carrier for both domestic and international long distance service.

Therefore, it is not surprising that an analysis of the proposed merger’s competitive effects on the international long distance market leads to the conclusion that the merger is likely to increase market concentration significantly.³³ The increase in the HHI for the majority of international long distance markets after the merger is well over 100 points. As noted above, such an increase gives rise to the presumption that the merger would likely “create or enhance market power or facilitate its exercise.”

B. Minority And Immigrant Consumers Will Bear The Disproportionate Burden Of Increased International Long Distance Rates

Because they are more likely to have familial and business ties to foreign countries than other Americans, immigrant consumers place a disproportionate amount of international long distance calls compared to other consumers. Thus, these consumers will shoulder the anticompetitive effects of the merger more than others.

³² *Application* at 59.

³³ The market referred to in this section includes the market for both international private line and IMTS services.

For example, in 1998, 6.2% of immigrants came to the United States from Africa, 11.4% from the Caribbean, 5.4% from Central America and 6.9% from South America.³⁴ The international long distance markets for these regions are highly concentrated. For the vast majority of the countries in these regions, the merger would mean increases in their HHIs well above the levels required to create a presumption that the merger would likely “create or enhance market power or facilitate its exercise.” For example, the merger is likely to create market power in: nine of Central America’s IMTS markets and eight of its nine international private line markets; nine of South America’s 13 IMTS markets and eight of its private line markets. Similar concentrations can be seen in the Caribbean and on the continent of Africa.³⁵ The rate increases, which will inevitably follow the proposed merger, will harm all consumers. However, minority and immigrant consumers will suffer the most. In fact, such an increase may be likely to force some of these consumers to limit or suspend telephone calls to family members in other parts of the world.

The conclusion is inescapable – the proposed merger will have immediate and profound anticompetitive effects upon the international long distance market, and will place a disproportionate amount of the burden of increased

³⁴ See Immigration and Naturalization Service, *Annual Report: Legal Immigration, Fiscal Year 1998, Table 2* (visited Feb. 17, 2000) <<http://www.ins.usdoj.gov/graphics/aboutins/statistics/index.htm>>.

³⁵ See Attachment 1 for maps detailing competitive effects in the international long distance market.

international long distance rates on minority and immigrant consumers. The proposed merger is not in the public interest.

V. THE PROPOSED MERGER WOULD ADVERSELY AFFECT COMPETITION IN THE INTERNET BACKBONE MARKET AND WOULD NOT IMPROVE EQUAL ACCESS TO ADVANCED INTERNET SERVICES

The merger of MCI WorldCom and Sprint would combine the two largest providers of Internet backbone services, which LULAC and Rainbow/PUSH find to be troublesome in at least two respects. First, control of 50 percent or more of Internet backbone revenues and Internet service provider connections would enable the post-merger company to restrict market entry and raise costs, thereby harming actual and potential Internet users. Second, considering MCI WorldCom's questionable history regarding the provision of advanced infrastructure to urban, low-income, minority and small business consumers, the increased market power resulting from the merger would likely lead to less access by those consumers to competitive Internet and high-speed broadband services. The inevitable consequence would be a dramatic expansion of the "digital divide." Because of the importance of equal and affordable access to the Internet, the Commission must ensure that this merger does not excessively consolidate the Internet access market by either denying the *Application* or requiring the divestiture of MCI WorldCom's UUNET business.

A. A Merger Would Produce Undue Concentration in the Internet Backbone Market and Increase Costs For End Users

A merger of MCI WorldCom and Sprint would allow undue concentration in the Internet backbone market. The Internet backbone, the core infrastructure of the Internet, allows the transmission of information between and among Internet Service Providers (“ISPs”), who in turn, provide access to millions of Internet users. A merger of MCI WorldCom and Sprint would create a company that could exercise significant power over the Internet backbone because it would control at least 50 percent of all ISP connections. This would enable it to essentially dictate the price and terms of carrying Internet traffic.

A combination of these two companies would concentrate market power in the hands of a single entity, providing the merged company with the ability to control the prices ISPs pay for Internet access. That, would lead to increases in the prices consumers pay for Internet access. The Applicants would also be in the position to charge other Internet backbone service providers higher prices to carry information on their networks, and to attempt to capture the rest of the backbone market. The merger would thus afford the post-merger WorldCom the opportunity to restrict market entry by competitors and raise the costs of its rivals. Further, as the Commission acknowledged during the MCI WorldCom proceeding, such concentration would likely degrade the quality of interconnection available to the merged company’s rivals, thus inducing

customers to migrate from rivals to the post-merger WorldCom.³⁶ This merger would thus provide WorldCom with both the motivation and the means to stifle burgeoning Internet competition.

Because this merger would result in competitive harm to the public's interest in unrestricted access to the Internet, the Commission should deny it. In the alternative, should the Commission decide to approve the merger but require divestiture of a portion of MCI WorldCom's backbone, LULAC and Rainbow/PUSH believe it may not be an adequate remedy to simply require divestment of Sprint's Internet backbone (the smaller of the two).

Facing similar market consolidation concerns in their merger, MCI and WorldCom agreed to divest MCI's Internet business prior to its merger. However, due to the integrated nature of Internet business, that divestiture has not remedied the problem as intended and Cable & Wireless, the purchaser of MCI's Internet backbone, has not been able to maintain MCI's prior share of ISP connections. Therefore, LULAC and Rainbow/PUSH urge the Commission to prevent consolidation in the Internet backbone market by prohibiting the merger, or at least securing the divestiture of MCI WorldCom's UUNET business.

B. The Proposed Merger Will Not Promote Access To Internet Services

The Applicants have not demonstrated, as required, that their merger would result in public interest benefits that outweigh its competitive harm.

³⁶ *MCI/WorldCom Order*, at 18107-8.

While a telecommunications company of the size proposed could offer public interest benefits such as improved access, through affordable prices and expanded infrastructure, there is nothing in the *Application* to indicate that the post-merger company would provide any such benefit. Access to advanced services is of particular concern to LULAC and Rainbow/PUSH because of the growing gap between those Americans who benefit from the new Internet economy and those who do not – what has been dubbed “the digital divide.”

The divide between the information “haves” and “have nots” is expanding at an alarming rate. According to the most recent Department of Commerce statistics, the gap between the number of white households with Internet access and black households with Internet access increased by 37.7% between 1997 and 1998.³⁷ During the same time, the divide between white and Hispanic households with Internet access grew by 37.6%.³⁸ These numbers indicate that minority access to advanced services is slipping; this merger will do little to close that gap.

Minorities’ lack of access becomes increasingly harmful as government bodies, community organizations, and corporations move resources from their ordinary channels of communication onto the Internet. Those Americans with access are using the Internet to file their taxes, apply for jobs, work from home, participate in political debate, and even comment on Federal government agency

³⁷ See *National Telecommunications and Information Administration*, supra n.4.

³⁸ *Id.*

proceedings. To the extent low-income and minority groups become excluded from and underrepresented on the Internet, they will be excluded from these benefits and real opportunities.

Considering MCI WorldCom's questionable commitment to make its advanced fiber network available to low-income and minority communities, gaining access to competitive Internet and high-speed broadband services is already difficult for these consumers. The "digital divide" is set to become a "digital chasm" if MCI WorldCom acquires Sprint.

LULAC and Rainbow/PUSH agree with Chairman Kennard that "for the Internet economy to develop to its full potential . . . there must be an available, affordable broadband telecommunications infrastructure."³⁹ The only way to ensure that advanced services are affordable and that the digital divide is ultimately closed is to either deny the merger application, or force the divestiture of substantial Internet backbone assets by the post-merger company. The Petitioners firmly believe that the only meaningful divestiture would focus on MCI WorldCom's UUNET business.

³⁹ *Internet: The American Experience*, An Address by William E. Kennard to the Conference on Internet & Telecommunications: The Stakes, Paris, France (Jan. 28, 2000) <<http://www.fcc.gov/Speeches/Kennard/2000/spwek004.html>>.

**VI. THE PROPOSED MERGER MAY DECREASE INVESTMENT
IN SPRINT'S LOCAL EXCHANGE, ADVERSELY
AFFECTING CUSTOMERS WHO CURRENTLY RELY ON
SPRINT'S LOCAL NETWORKS**

MCI WorldCom's historical focus on business customers and lack of commitment to provide local service to residential consumers has the potential to threaten the quality of service to consumers who depend on Sprint's local exchange service. The Petitioners believe that the merger of MCI WorldCom and Sprint would adversely affect consumers of local telephone service and demands an inquiry into the prospect of diminished quality in the provision of local service to Sprint's current customer base.

Sprint is the sixth largest incumbent local exchange carrier ("ILEC") in the country with ILEC operations in 18 states.⁴⁰ Sprint's service includes approximately 8 million access lines.

Meanwhile, MCI WorldCom has long employed a strategy of focusing on large business customers and has shown little interest in maintaining facilities to serve local residential consumers. There is no reason to believe that MCI WorldCom's acquisition of Sprint's local exchange lines will change this. Indeed, one of the reasons stated for the MCI and WorldCom merger was to provide extensive facilities-based local service. Two years later, this promise has not materialized in the form of expanded facilities for local residential service. MCI

⁴⁰ Sprint has local telephone operations in Florida, Indiana, Kansas, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wyoming.

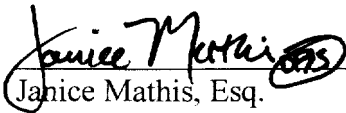
WorldCom is now asserting the same local service benefits from its current merger conquest.

What is more likely to result from this merger is that, in order to achieve the synergies the companies claim will result from their combination, local exchange properties currently operated by Sprint will not be modernized. As a consequence, consumers will be denied the competitive, advanced services to which they are entitled. The Commission should examine whether MCI WorldCom will make the same commitment of resources to upgrading their local residential facilities as have Sprint and other ILECs and CLECs nationwide. The Commission should also examine the merger's potential effect on the provision of Lifeline and other essential services.

VII. CONCLUSION

For the above-stated reasons, The Rainbow/PUSH Coalition, League of United Latin American Citizens and the Greenlining Institute/Latino Issues Forum respectfully request the Commission deny the Applications of MCI WorldCom Inc. and Sprint Corporation, or, in the alternative, seek agreement from the Applicants to conditions that would resolve the inequitable and anticompetitive effects of the proposed merger.

Respectfully Submitted,


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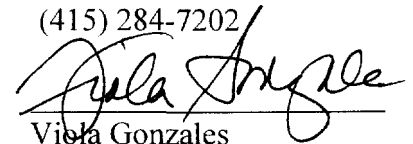

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February 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2000, I caused copies of the foregoing The Petition to Deny of The Rainbow/Push Coalition, The League of United Latin American Citizens, The Greenlining Institute and The Latino Issues Forum to be mailed via first-class postage prepaid mail to the following:

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ATTACHMENT 1

US CONSUMERS WILL PAY MORE WHEN CALLING OTHER NORTH and CENTRAL AMERICAN COUNTRIES

MEXICO
4894
639

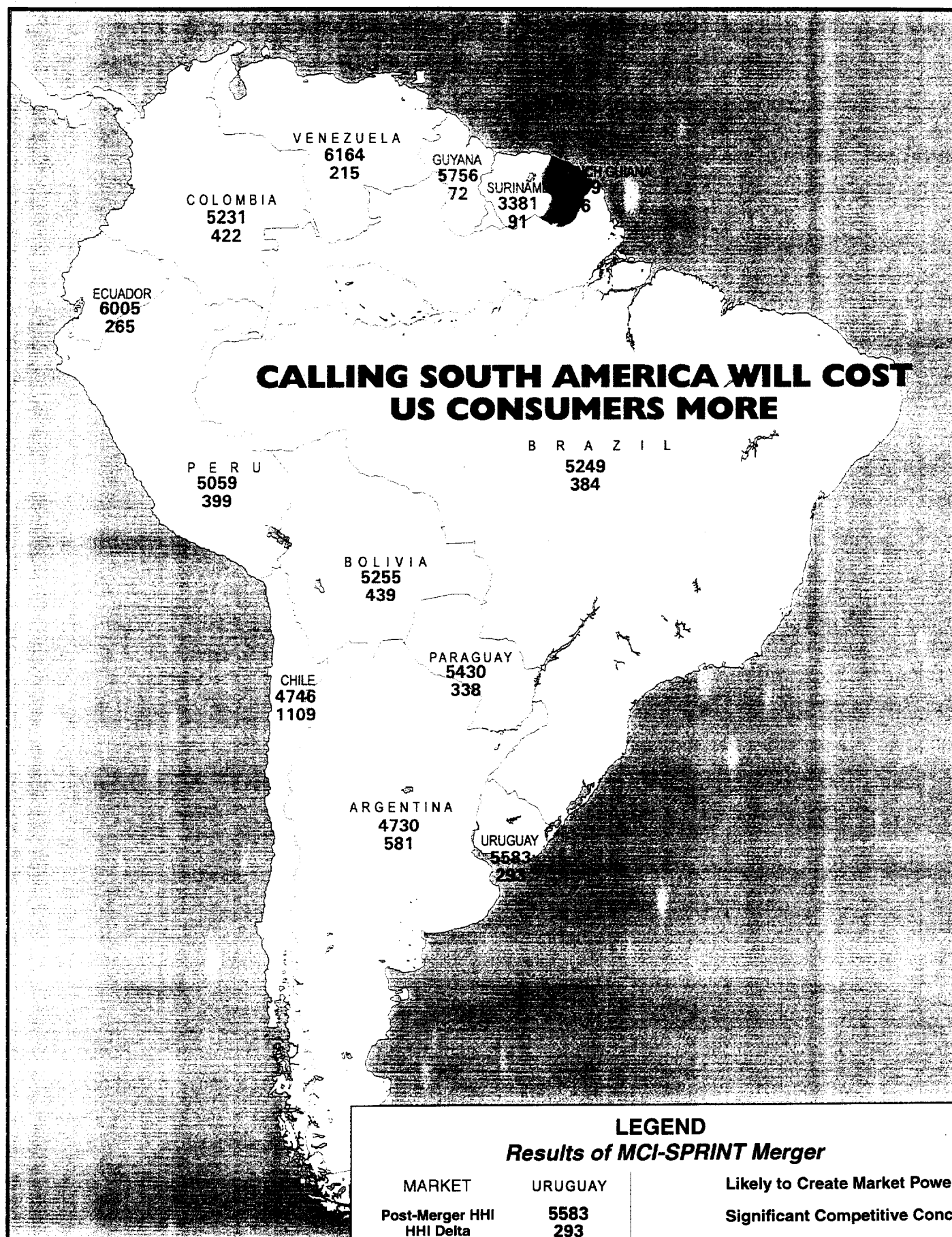
LEGEND

Results of MCI-SPRINT Merger

MARKET	MEXICO	
Post-Merger HHI	4894	Likely to Create Market Power
HHI Delta	639	Significant Competitive Concerns
		 No Further Analysis

6347
4197
6022
GUATEMALA
5116
615
4729
3918
HONDURAS
NICARAGUA
5192
581
PANAMA
5327
399
COSTA RICA
5442
419
SALVADOR
5003
637

Source: FCC, 1999 Section 43.61 International Telecommunications Data
(Jan. 31, 2000) - data from 1998



Source: FCC, "1998 Section 43.61 International Telecommunications Data" (Jan. 31, 2000) - data from 1998

Bermuda
5131
539

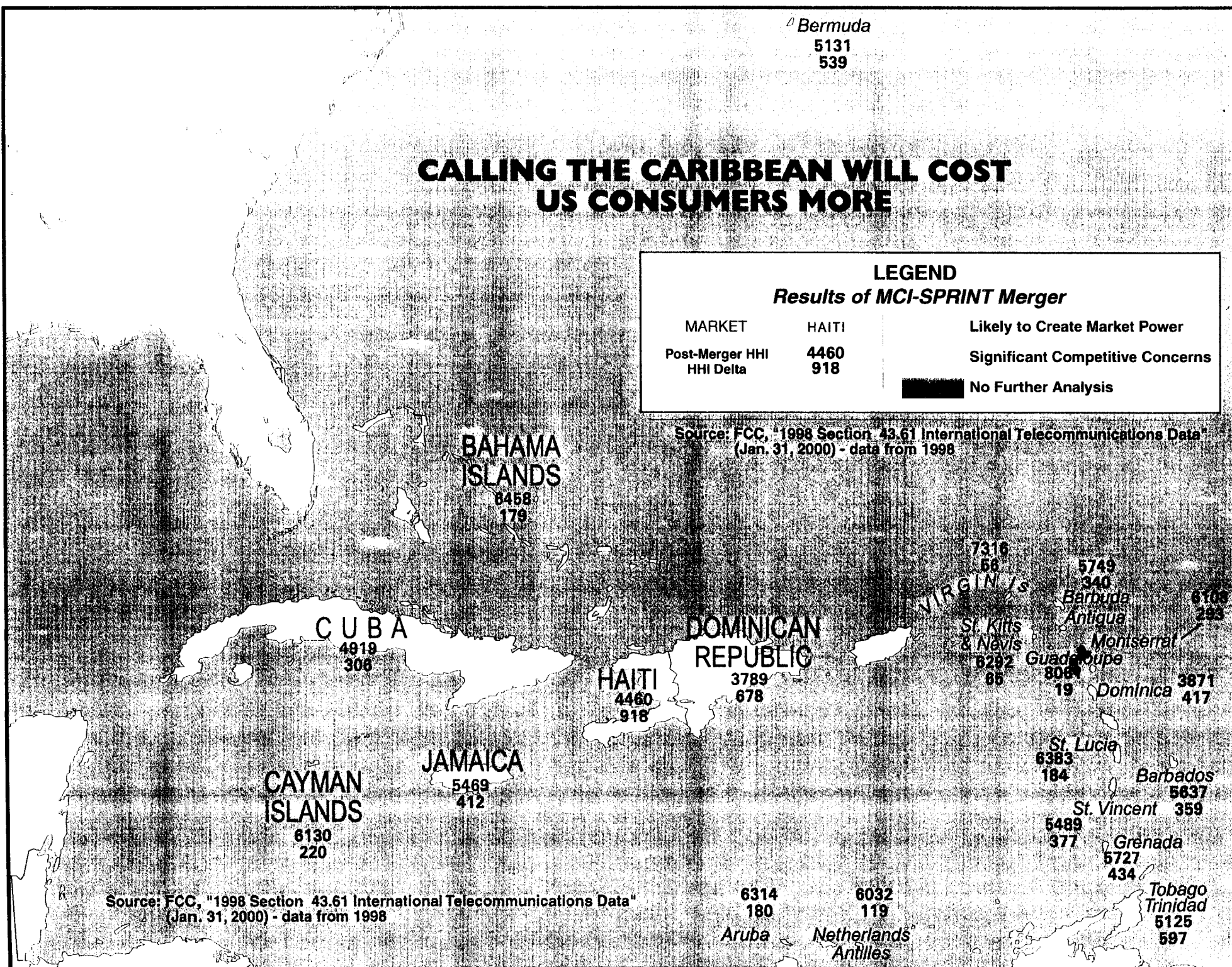
CALLING THE CARIBBEAN WILL COST US CONSUMERS MORE

LEGEND

Results of MCI-SPRINT Merger

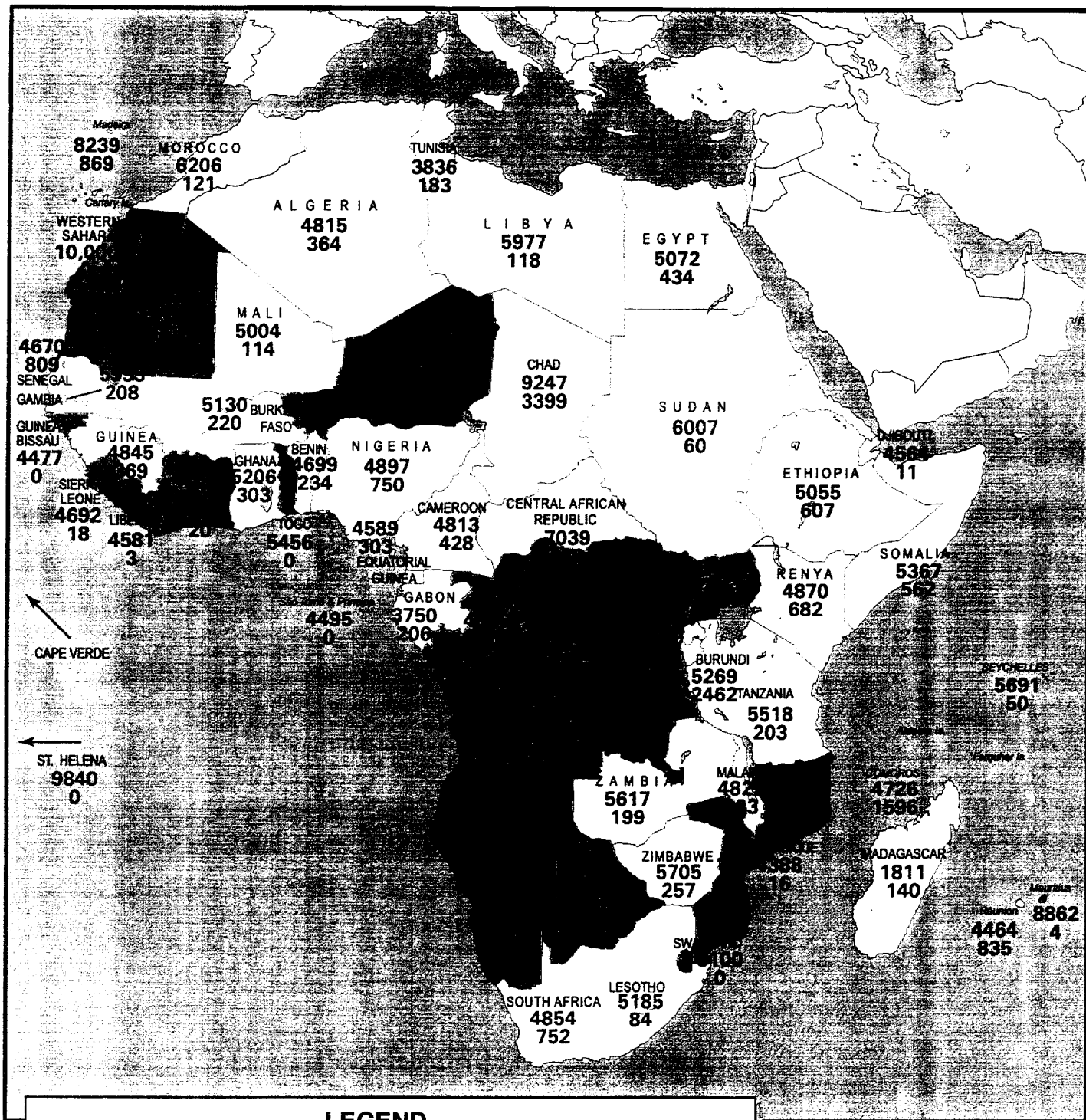
MARKET	HAITI	
Post-Merger HHI	4460	Likely to Create Market Power
HHI Delta	918	Significant Competitive Concerns
		No Further Analysis

Source: FCC, "1998 Section 43.61 International Telecommunications Data"
(Jan. 31, 2000) - data from 1998



Source: FCC, "1998 Section 43.61 International Telecommunications Data"
(Jan. 31, 2000) - data from 1998

CALLING AFRICA WILL COST US CONSUMERS MORE



LEGEND

Results of MCI-SPRINT Merger

MARKET	NAMIBIA	Likely to Create Market Power
Post-Merger HHI	7756	Significant Competitive Concerns
HHI Delta	36	No Further Analysis

Source: FCC, "1998 Section 43.61 International Telecommunications Data" (Jan. 31, 2000) - data from 1998